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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,553	02/19/2004	Philip Paul Narini	CU-3428	5658

26530 7590 08/24/2005

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EXAMINER

BERKO, RETFORD O

ART UNIT	PAPER NUMBER
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1618

DATE MAILED: 08/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/782,553	NARINI ET AL.	
	Examiner	Art Unit	
	Retford Berko	1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Joint Inventors

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim Rejections-Sec 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1 is rejected under 35 USC 102(b) as anticipated by Fabo et al (US 5, 340, 363).

Fabo et al (Patent '363) teach a layered, wound dressing article, comprising absorbent layer attached to a hydrophobic layer, said article made of polyurethane foam containing anti-bacterial agent or other medicament (abstract, col 4; lin 10-15).

Claim 1 is anticipated by Fabo et al (Patent '363).

Art Unit: 1618

2. (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim 1 rejected under 35 USC 102(e) as anticipated by Baker et al (US 6, 852, 905). Baker et al (Patent '905) teach an adsorbent foam material (col 6, lin 33-43, col 11, lin 45-50) comprising layers (col 8, lin 10-15) having side edges (col 8, lin 35-40) and including medicaments, fragrances and surfactants (col 23, lin 40-45).

Claim 1 is anticipated by Patent Baker et al (Patent '905).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 1618

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
3. Claims 1-35 are rejected as unpatentable under 35 U.S.C. 103(a) over Everett et al (US 6, 437, 214) in view of McRae et al (US 3, 978, 855) further in view of Fabo (US 5, 340, 363).

Everett et al (Patent '214) disclose absorbent article having layers and edges with porous foam—(col 12, lin 42-50) wherein the foam is open cell foam (col 24, lin 51).

Everett does not teach the use of medicament or medicated foam in the structure of the article.

McRae et al (Patent '855) disclose open celled polyurethane foam article (abstract, colm 3, lin 16, lin 64-65, col 5, lin 35-43; col 6, lin 20-25). According to McRae, the pores in the foam article have size of approx 200 micrometers (col 3, lin 30-35, col 6, lin 30-35 and col 11, lin 28) and the structure is used for surgical dressing and wounds (col 12, lin 1-5).

McRae does not teach the use of medicament in the foam structure.

Fabo et al (Patent '363) teach a layered, wound dressing article, comprising absorbent layer attached to a hydrophobic layer, said article made of polyurethane foam containing anti-bacterial agent or other medicament (abstract, col 4, lin 10-15), e.g. antibacterial agents (col 4, lin 30-35).

Art Unit: 1618

One of ordinary skill would be motivated to prepare a medicated foam structure as proposed in the instant claims and as previously done in the prior art cited. One of ordinary skill would expect to obtain surgical dressing article that whose medicated foam structure would allow improved access function to the injured dermal surface as shown by Everett (Patent '214, abstract) and simultaneously enhance a proper microclimate for tissue regeneration to facilitate wound healing as achieved byb McRae (Patent '855, col 6, lin 18-25. Therefore, the invention as a whole would have been prima facie obvious to one of ordinary skill at the time that it was made.

4. Claims 1-39 are rejected as unpatentable under 35 U.S.C. 103(a) over Daugan et al (EP 0219969) in view of Baker et al (US 6, 852, 905) further in view of the combination of Shalaby et al (US 5, 677, 355) and Mackles et al (US 3, 770, 648).

Dougan (Patent '969) disclosed diaper comprising open cell foam material having elastic strips (abstract, page 5, lin1-3, page 7, lin 5 and page 9, lin 8) with pores (page 10, lin 15).

Daugan does not teach the use of medicament in the foam article.

Baker et al (Patent '905) teach an adsorbent foam material (col 6, lin 33-43, col 11, lin 45-50) comprisinglayers (col 8, lin 10-15) having side edges (col 8, lin 35-40) and including medicaments, fragrances and surfactants (col 23, lin 40-45).

Shalaby et al (Patent '355) is relied upon for the disclosure that a medicated foam article having pores as claimed by applicant may be made with custom-tailored specifications to have specific pore size that can be doped with the desired biologically active compound and can be implanted into the body (col 4, lin 65, continuing to col 5, lin 1-10, lin 55-60, col 7, lin 55-65 continuing to col 8, lin 1-15).

Art Unit: 1618

Mackles et al (Patent '648) provides the disclosure in which a medicated foaming composition comprising medicament (col 5, lin 11-20) may be made into articles such as deodorant foam wipes (col 5, lin 45-50) and gloves (col 7, Example 10), as claimed by applicant.


One of ordinary skill would be motivated to make medicated foam articles (e.g. diapers, wipes, and wound dressings). One of ordinary skill would expect to obtain foam articles that can be used for personal hygiene as shown by Mackles (Patent '648, col5, lin 45-50, col7, lin 50-55) or wound dressing articles for delivery of antibacterial agents to wound sites for control of infection and facilitate healing of wounds. Therefore, the invention as a whole would have been prima facie obvious to one of ordinary skill at the time that it was made.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Retford Berko** whose telephone number is 571-272-0590. The examiner can normally be reached on M-F from 8.00 am to 5.30 pm

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Thurman K Page**, can be reached on 571-272-0602.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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